

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)	JUDGE DONALD C. NUGENT
)	
Plaintiff,)	CASE NO.: 1:08 CR 506
)	
vs.)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
ANTHONY L. VIOLA,)	
)	
Defendant.)	

This matter is before the Court on Defendant, Anthony L. Viola's Motion to Compel Production of FBI Records. (ECF #470). Mr. Viola sought production of certain records from the FBI, which request was denied. He appealed the denial to the U.S. Department of Justice, Office of Information Policy, which remanded the request for further processing of all "releasable records." Apparently unsatisfied with the time it is taking the FBI to respond, Mr. Viola now requests this Court to compel production of all records responsive to his record request by a date certain.

The Court, however, cannot consider Mr. Viola's request at this time because there are now two notices of appeal filed by Mr. Viola which divest this Court of jurisdiction over the case. *See, United States v. Garcia-Robles*, 562 F.3d 763 (6th Cir. 2009). Further, Mr. Viola has no

standing to file a motion to compel because he has not exhausted his administrative remedies under the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B) and (C). *See, United States v. Reed*, 1994 WL 524088 (6th Cir. Sept. 26, 1994), citing *In re Steele*, 799 F.2d 461, 465-66 (9th Cir. 1986). Mr. Viola asserts that he has already pursued his administrative remedies through his original appeal of the FBI's blanket denial, and, in fact, that issue was appealed and resolved in his favor. However, Mr. Viola has not utilized his administrative remedies under the FOIA for the delay in processing and production post-remand. Consequently, there is no administrative record that this Court could review, relating to the determination of what records are or should be releasable, and why the production of any such documents has taken over a year to complete.

Mr. Viola must resolve his appeals, and address his current complaints through the proper FOIA administrative procedures before this Court may intercede in any way. Defendant's Motion to Compel (ECF #470) is, therefore, DENIED. IT IS SO ORDERED.

DATED: February 27, 2015


DONALD C. NUGENT
United States District Judge